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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
| 09/464,610      | 12/15/99    | SCHMITT              | P 498-53-CON/R      |

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QM12/0504

EXAMINER

JACKSON, S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3738

*2*

DATE MAILED:

05/04/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/466,610**

Applicant(s)  
**Schmitt et al.**

Examiner  
**Suzette Jackson**

Group Art Unit  
**3738**



☒ Responsive to communication(s) filed on Dec 15, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-32 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 6-10 is/are allowed.

☒ Claim(s) 1, 2, 11, 12, 15-22, and 24-30 is/are rejected.

☒ Claim(s) 3-5, 13, 14, 23, 31, and 32 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Dec 15, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Reissue Applications***

1. This reissue application was filed without the required offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the warp yarns, weft yarns, denier of the yarns, any multifilament yarns and picks per layer per inch (as stated in claims 19-23) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

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4. Claims 11, 12, 15, 17, 18, and 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Trescony et al. USPN 5,282,847 which discloses the invention as claimed comprising : A woven textile graft (col. 4, lines 24-29) with an elongate tubular graft having a wall thickness of dimension such that the graft body is capable of being radially compressed for insertion into a delivery catheter; having a plurality of longitudinally spaced wave-like crimps along the length thereof on both sides of the tubular body with no less than 8 crimps per cm; wherein the wall thickness is no greater than about 0.16mm (col. 3, line 45), and it is inherent that the graft can be deployed by compression for insertion into a catheter.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 16, 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trescony et al. 5,282,847 in view of Lazarus USPN 5,275,222. Trescony et al. has been disclosed above noting figures 1-6 however Trescony et al. does not specify the use of a radiopaque marker or complete deployment apparatus. Lazarus teaches the use of a radiopaque marker made from such materials as platinum tungsten alloy wire with a diameter of 0.003" and the use of a catheter for graft deployment. It would have been obvious to one having ordinary

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skill in the art at the time the invention was made to take the invention of Trescony and deploy the graft with a catheter apparatus as taught by Lazarus and to incorporate the radiopaque marker as a way of tracking the proper placement of the graft to the appropriate vessel.

7. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trescony et al. in view of Liebig et al. Trescony et al. has been disclosed above, however the details of the weaving process are not specified. Liebig et al. teaches the weft, warp, and denier of the woven thread (col. 3, lines 54-65). It would have been obvious to take the graft of Trescony et al. and utilized the weaving techniques of Liebig et al. because it would ensure a graft tubing with uniform strength and rigidity along its length.

*Allowable Subject Matter*

8. Claims 3-5, 13, 14, 23, 31 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 6-10 are allowed.

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***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bokros et al. 4,164,045; Liebig et al. 4,047,252; Koch 4,892,539; Trescony et al. 5,282,847; De Goicoechea et al. 5,383,927; Lunn 5,476,506; Seiler, Jr. et al. 4,550,447; and Hood 4,545,082 all show relevant materials.

11. Any inquiry concerning this communication or earlier communication regarding this application should be directed to examiner Suzette Jackson at (703) 308-6516. If you are unable to reach me, please contact my supervisor, Mickey Yu, at (703) 308-2672. In a case requiring immediate assistance, please call (703) 308-0858 to reach the main operator for Sector 3700.



S. Jackson  
17 April 2000



David H. Willse  
Primary Examiner